

RECORDER'S MEMORANDUM
This instrument is of poor quality
at the time of imaging

2012-23437
Cause No. _____

Pg. 24
P-22

STATE OF TEXAS
Plaintiff

v.

HUALI INVESTMENT, INC.;
LE PROMENADE COUNCIL
OF CO-OWNERS, INC.;
LYDIA M. ESTEBANE;
GLORIA N. GOMEZ;
MANUEL PINEDA;
MARIA PINEDA;
RONNELL TRESVANT;
MARION TRESVANT;
NANCY ARTEAGA;
MAXIMINO CERVANTES;
CHARLENE HUNTER;
ANA PAULA PALACIOS;
JOSE PALACIOS;
BAUDILIO MORAN;
DOMITILA MANCIA MORAN;
NCN, L.L.C.;
FIDELIA RIVERA;
JORGE RIVERA;
FELIPE ROSALES;
TEJBAHADUR SINGH CHADDA;
PRABHUJECT KAUR CHADDA;
ESTATE OF THERESE STARR;
SHIV KUMAR;
SUNITA KUMAR;
AVIGNON HOLDINGS, L.L.C.;
XI GUANG LI;
MARIA DIAZ;
EMIGDIO DIAZ;
ALICIA AGUIRRE FLORES;
MARGARITA VIGO;
JOSE MARINELARENA;
YADIRA OLIVAS-GONZALEZ;
ANTONIO FLORES;
REBECA FLORES;
SULWAN REHMAN;
ANTONIO LUEVANO;
MARIA LUEVANO;

IN THE 164 DISTRICT COURT

OF HARRIS COUNTY, TEXAS

FILED

Chris Daniel
District Clerk

APR 24 2012

Time: _____

Harris County, Texas

By _____

Deputy

www.pearsoned.com

164

**PLAINTIFF'S ORIGINAL PETITION FOR ABATEMENT OF COMMON AND
PUBLIC NUISANCES, APPLICATION FOR TEMPORARY AND
PERMANENT INJUNCTIONS AND REQUEST FOR DISCLOSURE**

NOW COMES THE STATE OF TEXAS, Plaintiff, by and through Harris County Attorney Vince Ryan, complaining that Defendants, Huali Investment, Inc.; Le Promenade Council of Co-Owners, Inc.; Lydia M. Estebane; Gloria N. Gomez; Manuel Pineda; Maria Pineda; Ronnell Tresvant; Marion Tresvant; Nancy Arteaga; Maximino Cervantes; Charlene Hunter; Ana Paula Palacios; Jose Palacios; Baudilio Moran; Domitila Mancia Moran; NCN, L.L.C.; Fidelia Rivera; Jorge Rivera; Felipe Rosales; Tejbahadur Singh Chadda; Prabhuject Kaur Chadda; Estate of Therese Starr; Shiv Kumar; Sunita Kumar; Avignon Holdings, L.L.C.; Xi Guang Li; Maria Diaz; Emigdio Diaz; Alicia Aguirre Flores; Margarita Vigo; Jose Marinelarena; Yadira Olivas-Gonzalez; Antonio Flores, Rebeca Flores; Sulwan Rehman; Antonio Luevano; Maria Luevano; Hortencia Hernandez; Eliverio Villagomez; Houston Residential Distressed

Property Fund; Huaren, L.L.C.; Guo Ping Li; Sunday Isaiah; Zion Menachem Ohana; Bordley, Inc.; Juan Martin Barron; Roseline Rasolovoahangy; Jose Santiago; Juana Santiago; Kenneth Williams; Juliana Williams; and the Real Property Known as 7400 Bissonnet, Le Promenade Townhomes, a Condominium Project ("Le Promenade"), all herein referred to as ("Defendants") are causing a common nuisance by habitually harboring criminal activity that includes multiple aggravated robbery and aggravated assaults, in violation of Chapter 125 of the Texas Civil Practice and Remedies Code. The Defendants also are causing a public nuisance by maintaining a place that is habitually used for engaging in gang activity. Le Promenade is where some members of a notorious Houston gang, La Primera, live and where they recruit members from adjacent Sharpstown High School. Le Promenade is where gang fights between La Primera and a rival gang, the Southwest Cholos, occur. Le Promenade at 7400 Bissonnet is considered the home turf of La Primera gang as is portrayed on this Youtube video link. <http://www.youtube.com/watch?v=MKqk5Ff5gdU>

Plaintiff seeks temporary and permanent injunctions to abate the common and public nuisances at 7400 Bissonnet, court costs, attorney's fees and penalties, and files this Original Petition for Abatement of Common and Public Nuisances, Application for Temporary and Permanent Injunctions and Request for Disclosure, and in support of this action would show the following:

I. Discovery Control Plan

1. In accordance with Tex. R. Civ. P. 190.1, Plaintiff states its intent that discovery in this cause be conducted under Level 2 by Tex. R. Civ. P. 190.1.

II. Parties

2. Plaintiff is the State of Texas, appearing and proceeding by and through Harris County and the Harris County Attorney's Office and is authorized to bring this suit by Tex. Civ. Prac. & Rem Code Ann. § 125.002 (Vernon 2011).
3. Defendant Huali Investment, Inc. is a majority owner of the condominiums at 7400 Bissonnet. It can be served by serving its registered agent, Guo Ping Li at 11103 Sands Point, Houston, Texas 77072.
4. Defendant Le Promenade Council of Co Owners, Inc. is the group for owners of condominiums at 7400 Bissonnet and owns several condominium units. It can be served by serving its registered agent, Guo Ping Li at 7400 Bissonnet, Unit 111, Houston, Texas 77074.
5. Defendant Lydia Estebane is an owner of a condominium unit at 7400 Bissonnet. She can be served at 7400 Bissonnet, Unit 2324, Building T, Houston, Texas 77074.
6. Defendant Gloria Gomez is an owner of a condominium unit at 7400 Bissonnet. She can be served at 7400 Bissonnet, Unit 2323, Building T, Houston, Texas 77074.
7. Defendant Manuel Pineda is an owner of a condominium unit at 7400 Bissonnet. He can be served at 7400 Bissonnet, Unit 2312, Building T, Houston, Texas 77074.
8. Defendant Maria Pineda is an owner of a condominium unit at 7400 Bissonnet. She can be served at 7400 Bissonnet, Unit 2312, Building T, Houston, Texas 77074.
9. Defendant Ronnell Tresvant is an owner of a condominium unit at 7400 Bissonnet. He can be served at 2119 Cartwright Road in Missouri City, Texas 77489.

10. Defendant Marion Tresvant is an owner of a condominium unit at 7400 Bissonnet. She can be served at 2119 Cartwright Road in Missouri City, Texas 77489.
11. Defendant Nancy Arteaga is an owner of a condominium unit at 7400 Bissonnet. She can be served at 7400 Bissonnet, Unit 2123, Houston, Texas 77074.
12. Defendant Maximino Cervantes is an owner of a condominium unit at 7400 Bissonnet. He can be served at 7400 Bissonnet, Unit 2123, Houston, Texas 77074.
13. Defendant Charlene Hunter is an owner of a condominium unit at 7400 Bissonnet. She can be served at 12063 E. Circle Drive, Houston, Texas 77071.
14. Defendant Ana Paula Palacios is an owner of a condominium unit at 7400 Bissonnet. She can be served at 7400 Bissonnet, Unit 2111, Building R, Houston, Texas 77074.
15. Defendant Jose Palacios is an owner of a condominium unit at 7400 Bissonnet. He can be served at 7400 Bissonnet, Unit 2111, Building R, Houston, Texas 77074.
16. Defendant Baudilio Moran is the owner of several condominium units at 7400 Bissonnet. He can be served at 7400 Bissonnet, Unit 2021 or Unit 2011, Building Q, Houston, Texas 77074.
17. Defendant Domitila Mancia Moran is the owner of several condominium units at 7400 Bissonnet. She can be served at 7400 Bissonnet, Unit 2021 or Unit 2011, Building Q, Houston, Texas 77074.
18. Defendant NCN, L.L.C. is an owner of a condominium unit at 7400 Bissonnet. It can be served by serving its registered agent, Nasser Namazi, at 3214 Meadway Drive, Houston, Texas 77082.

19. Defendant Fidelia Rivera is an owner of a condominium unit at 7400 Bissonnet. She can be served at 14706 Jade Glen Court, Sugar Land, Texas 77489.
20. Defendant Jorge Rivera is an owner of a condominium unit at 7400 Bissonnet. He can be served at 14706 Jade Glen Court, Sugar Land, Texas 77489.
21. Defendant Felipe Rosales is an owner of a condominium unit at 7400 Bissonnet. He can be served at 7400 Bissonnet, Unit 1722-2, Building O-2, Houston, Texas 77074.
22. Defendant Tejbahadur Singh Chadda is an owner of a condominium unit at 7400 Bissonnet. He can be served at 7400 Bissonnet, Unit 123, Building A, Houston, Texas 77074.
23. Defendant Prabhuject Kaur Chadda is an owner of a condominium unit at 7400 Bissonnet. She can be served at 7400 Bissonnet, Unit 123, Building A, Houston, Texas 77074.
24. Defendant Estate of Therese Starr owns a condominium unit at 7400 Bissonnet. It can be served at 7400 Bissonnet, Unit 124, Building A, Houston, Texas 77074.
25. Defendant Shiv Kumar is an owner of a condominium unit at 7400 Bissonnet. He can be served at 13407 Eldridge Villa Street, Sugar Land, Texas 77498 or 9707 Braeburn Glen, #179, Houston, Texas 77074.
26. Defendant Sunita Kumar is an owner of a condominium unit at 7400 Bissonnet. She can be served at 13407 Eldridge Villa Street, Sugar Land, Texas 77498 or 9707 Braeburn Glen, #179, Houston, Texas 77074.
27. Defendant Avignon Holdings, L.L.C. is an owner of a condominium unit at 7400 Bissonnet. It can be served by serving its registered agent, National Registered Agents, Inc. at 1021 Main Street, Suite 1150, Houston, Texas 77002.

28. Defendant Xi Guang Li is an owner of several condominium units at 7400 Bissonnet. He can be served at 7400 Bissonnet, Unit 217, Houston, Texas 77074. He may also be served at 1115 Mulberry Lane, Houston, Texas 77401; 5312 Evergreen Street, Bellaire, Texas 77401; or 1110 Howard Lane, Bellaire, Texas 77401.
29. Defendant Maria Diaz is an owner of a condominium unit at 7400 Bissonnet. She can be served at 7400 Bissonnet, Unit 426-1, Building C, Houston, Texas 77074.
30. Defendant Emigdio Diaz is an owner of a condominium unit at 7400 Bissonnet. He can be served at 7400 Bissonnet, Unit 426-1, Building C, Houston, Texas 77074.
31. Defendant Alicia Aquirre Flores is the owner of several condominium units at 7400 Bissonnet. She can be served at 7400 Bissonnet, Unit 512, Building D, Houston, Texas 77074 or at 8400 Nairn Street, Apartment 1003, Houston, Texas 77074.
32. Defendant Margarita Vigo is an owner of a condominium unit at 7400 Bissonnet. She can be served at 7400 Bissonnet, Unit 621, Building E, Houston, Texas 77074.
33. Defendant Jose Marinelarena is an owner of a condominium unit at 7400 Bissonnet. He can be served at 7527 Anzac Street, Houston, Texas 77020.
34. Defendant Yadira Olivas-Gonzalez is an owner of a condominium unit at 7400 Bissonnet. She can be served at 7527 Anzac Street, Houston, Texas 77020.
35. Defendant Antonio Flores is an owner of a condominium unit at 7400 Bissonnet. He can be served at 7400 Bissonnet, Unit 2114, Building R, Houston, Texas 77074.
36. Defendant Rebeca Flores is an owner of a condominium unit at 7400 Bissonnet. She can be served at 7400 Bissonnet, Unit 2114, Building R, Houston, Texas 77074.
37. Defendant Sulwan Rehman is an owner of a condominium unit at 7400 Bissonnet. He or she can be served at 7400 Bissonnet, Unit 912, Building G, Houston, Texas 77074.

38. Defendant Antonio Luevano is an owner of a condominium unit at 7400 Bissonnet. He can be served at 7400 Bissonnet, Unit 111-1, Building I, Houston, Texas 77074.

39. Defendant Maria Luevano is an owner of a condominium unit at 7400 Bissonnet. She can be served at 7400 Bissonnet, Unit 1111, Building I, Houston, Texas 77074.

40. Defendant Hortencia Hernandez is an owner of a condominium unit at 7400 Bissonnet. She can be served at 7400 Bissonnet, Unit 1124, Building I, Houston, Texas 77074.

41. Defendant Eliverio Villagomez is an owner of a condominium unit at 7400 Bissonnet. He can be served at 7400 Bissonnet, Unit 1322, Building K, Houston, Texas 77074.

42. Defendant Houston Residential Distressed Property Fund is an owner of a condominium unit at 7400 Bissonnet. It can be served at 5847 San Felipe Street, Suite 4200, Houston, Texas 77057.

43. Defendant Huaren, L.L.C. is an owner of a condominium unit at 7400 Bissonnet. It can be served by serving its manager, Xi Guang Li, at 1115 Mulberry Lane, Bellaire, Texas 77401. Mr. Li may also be found at 7400 Bissonnet, Houston, Texas 77074; 5312 Evergreen Street, Bellaire, Texas 77401; or 1110 Howard Lane, Bellaire, Texas 77401.

44. Defendant Guo Ping Li is the owner of several condominium units at 7400 Bissonnet. He can be served at 5312 Evergreen Street, Bellaire, Texas 77401. Mr. Li may also be found at 1115 Mulberry Lane, Bellaire, Texas 77401.

45. Defendant Sunday Isaiah is an owner of a condominium unit at 7400 Bissonnet. He can be served at 7400 Bissonnet, Unit 1613, Building N, Houston, Texas 77074.

46. Defendant Zion Menachem Ohana is an owner of a condominium unit at 7400 Bissonnet. He can be served at 7602 Hopewell Lane, Houston, Texas 77071.

47. Defendant Bordley, Inc. is an owner of a condominium unit at 7400 Bissonnet. It can be served by serving its registered agent, Clifton Little Jr., at 4545 Post Oak Place Drive, Suite 249, Houston, Texas 77027.

48. Defendant Juan Martin Barron is an owner of a condominium unit at 7400 Bissonnet. He can be served at 6202 Skyline Drive, Apartment 17, Houston, Texas 77057.

49. Defendant Roseline Rasolovoahangy is an owner of a condominium unit at 7400 Bissonnet. She can be served at 1812 Mezes Ave. Belmont, CA 94002.

50. Defendant Jose Santiago is an owner of a condominium unit at 7400 Bissonnet. He can be served at 7400 Bissonnet, Unit 1722, Building O-1, Houston, Texas 77074.

51. Defendant Juana E. Santiago is an owner of a condominium unit at 7400 Bissonnet. She can be served at 7400 Bissonnet, Unit 1722, Building O-1, Houston, Texas 77074.

52. Defendant Kenneth Williams is an owner of a condominium unit at 7400 Bissonnet. He can be served at 7400 Bissonnet, Unit 4211, Building C-1, Houston, Texas 77074.

53. Defendant Juliana Williams is an owner of a condominium unit at 7400 Bissonnet. She can be served at 7400 Bissonnet, Unit 4211, Building C-1, Houston, Texas 77074.

54. Defendant, the Real Property Known as 7400 Bissonnet, Le Promenade Townhomes, a Condominium Project, is a condominium complex located in Harris County, Texas. The State of Texas brings this suit *in rem*, (as allowed under the Tex. Civ.

Prac. & Rem. Code Ann. § 125.002(b) (Vernon 2011). Service is requested on the owners of the property, all Defendants as named in this suit.

III. Jurisdiction and Venue

55. This court has subject matter and personal jurisdiction over the cause and the parties thereto based on the Texas Civil Practice and Remedies Code Annotated § 125.002(a) (Vernon 2011) for the reasons that the property made the basis of this cause is being maintained as a common nuisance as contemplated by Chapter 125 of the Civil Practice and Remedies Code.

56. This court has subject matter and personal jurisdiction over the cause and the parties thereto based on the Texas Civil Practice and Remedies Code Annotated § 125.064 (a) (Vernon 2011) for the reasons that the property made the basis of this cause is being maintained as a public nuisance as contemplated by Chapter 125 of the Civil Practice and Remedies Code.

57. Venue of this cause is proper in this court, based on Texas Civil Practice & Remedies Code Annotated § 15.016 (Vernon 2002). More particularly, Section 125.002 (a) of the Texas civil Practices & Remedies Code prescribes mandatory venue of an action to enjoin and abate a common nuisance in the county in which it is alleged to exist. Section 15.016 of the Texas Civil Practice & Remedies Code provides that an action for which venue is made mandatory by a statute shall be brought in the county required under the statute. The real property upon which the Defendants are maintaining a common nuisance is located in Harris County, Texas.

IV. Statutory Basis for Suit

a. common nuisance – habitual criminal activity

58. Tex. Civ. Prac. & Rem. Code Ann. §125.0015(a) states that “[a] person who maintains a place to which persons habitually go for the following purposes and who knowingly tolerates the activity and furthermore fails to make reasonable attempts to abate the activity maintains a common nuisance.” The “purposes” that give rise to a Chapter 125 nuisance are as follows:

- (1) Discharge of a firearm in a public place as prohibited by the Penal Code;
- (2) Reckless discharge of a firearm as prohibited by the Penal Code;
- (3) Engaging in organized criminal activity as a member of a combination as prohibited by the Penal Code;
- (4) Delivery, possession, manufacture, or use of a controlled substance in violation of Chapter 481 of the Health and Safety Code;
- (5) Gambling, gambling promotion, or communicating gambling information as prohibited by the Penal Code;
- (6) Prostitution, promotion of prostitution, or aggravated promotion of prostitution as prohibited by the Penal Code;
- (7) Compelling prostitution as prohibited by the Penal Code;
- (8) Commercial manufacture, commercial distribution, or commercial exhibition of obscene material as prohibited by the Penal Code;
- (9) Aggravated assault as described by Section 22.02 of the Penal Code;
- (10) Sexual assault as described by Section 22.011 of the Penal Code;
- (11) Aggravated sexual assault as described by Section 22.021 of the Penal Code;
- (12) Robbery as described in Section 29.02 of the Penal Code;
- (13) Aggravated robbery as described by Section 29.03 of the Penal Code;
- (14) Unlawfully carrying a weapon as described by Section 46.02 of the Penal Code;

- (15) Murder as described by Section 19.02 of the Penal Code;
- (16) Capital murder as described by Section 19.03 of the Penal Code;
- (17) Continuous sexual abuse of a young child or children as described by Section 21.02 of the Penal Code;
- (18) Massage therapy or other massage services in violation of Chapter 455 of the Occupations Code.
- (19) Employing a minor at a sexually oriented business as defined by Section 243.002, Local Government Code;
- (20) Trafficking of persons as described by Section 20A.02, Penal Code;
- (21) Sexual conduct or performance by a child as described by Section 43.25, Penal Code; or
- (22) Employment harmful to a child as described by Section 43.251, Penal Code.

Section 125.0015(a) (1)-(22).

59. Section 125.004(a) provides that “[p]roof that and activity described by Section 125.0015 is frequently committed at the place involved or that the place is frequently used for an activity described by Section 125.0015 is prima facie evidence that the defendant knowingly tolerated the activity.” Section 125.004(b) states that “[e]vidence that persons have been arrested for or convicted of offenses for an activity described by Section 125.0015 in the place involved is admissible to show knowledge on the part of the defendant with respect to the act that occurred.”

60. Le Promenade has 205 separate condominium units. It is located next to Sharpstown High School and the Sugar Grove Academy. There are a total of 52 separate owners. Huali Investment, Inc. owns a majority of the condominium units at 7400 Bissonnet.

61. Between May 2010 and February 2012, there were more than 100 calls for police assistance at Le Promenade. During that time period there were five aggravated

robberies, seven aggravated assaults, one delivery of a controlled substance – cocaine, and one discharge of a firearm in a public place. Several of these crimes as well as other crimes that occurred on the property that met Section 125.061(3) of the Civil Practice & Remedies Code as set out below have been identified by Houston Police officers as gang-related.

62. Defendants have knowingly tolerated this Chapter 125 and have allowed such activity to occur habitually on the Property. In light of the foregoing, as a matter of law, the Property constitutes a common nuisance within the meaning of Chapter 125.

b. Public Nuisance – gang activity

63. Any person who owns or is responsible for maintaining a place that is habitually used for engaging in gang activity may be made a defendant in a Suit to Abate Nuisance. Tex. Civ. Prac. & Rem. Ann. § 125.064 (b).

64. The habitual use of a place by a combination¹ or criminal street gang for engaging in gang activity is a public nuisance. Tex. Civ. Prac. & Rem. Ann. § 125.063.

65. As set out in Tex. Civ. Prac. & Rem. Code Ann. § 125.061(3) (Vernon Supp. 2011), “Gang activity” means the following types of conduct:

- (A) organized criminal activity as described by Section 71.02, Penal Code;
- (B) terroristic threat as described by Section 22.07, Penal Code;
- (C) coercing, soliciting, or inducing gang membership as described by Section 22.022(a) or (a-1), Penal Code;

¹ A combination gang means three or more persons who collaborate in carrying on criminal activities although: (1) participants may not know each other's identity, (2) membership in the combination may change from time to time; and (3) participants may stand in a wholesaler-retailer or other arm's length relationship in illicit distribution operations. Tex. Penal Code Ann. § 71.01 (a). A Criminal Street Gang is defined as three or more persons having a common identifying sign or symbol or an identifiable leadership who continuously or regularly associate in the commission of criminal activities. Tex. Penal Code Ann. § 71.01 (d).

- (D) criminal trespass, as described by Section 30.05, Penal Code;
- (E) disorderly conduct as described by Section 42.01, Penal Code;
- (F) criminal mischief as described by Section 28.03, Penal Code, that causes a pecuniary loss of \$500 or more;
- (G) a graffiti offense in violation of Section 28.08, Penal Code;
- (H) a weapons offense in violation of Chapter 46, Penal Code; or
- (I) unlawful possession of a substance or other item in violation of Chapter 481, Health and Safety Code.

66. In an action brought under this subchapter, proof that gang activity by a member of a combination or a criminal street gang is frequently committed at a place or proof that a place is frequently used for engaging in gang activity by a member of a combination or a criminal street gang is prima facie evidence that the proprietor knowingly permitted the act, unless that act constitutes conspiring to commit gang activity. Tex. Civ. Prac. & Rem. Code Ann. 125.069.

67. In an action brought under this subchapter, the court may award a prevailing party reasonable attorney's fees and costs. Tex. Civ. Prac. & Rem. Code Ann. § 125.068.

68. In addition to any other order that may be issued under this subchapter or other law, a court of appeals or a trial court acting under Section 125.067(b) or (c) may issue an injunctive order under this subchapter stating that the injunction remains in effect during the course of the trial or until lifted by the court. Tex. Civ. Prac. & Rem. Code Ann. § 125.0675.

69. If the court finds that a place is habitually used in a manner that constitutes a public nuisance, the court may include in its order reasonable requirements to prevent the use of the place for gang activity. Tex. Civ. Prac. & Rem. Code Ann. § 125.065 (b).

70. A person who violates a temporary or permanent injunction order under this subchapter is subject to the following sentences for civil contempt:

- (1) a fine of not less than \$1,000 nor more than \$10,000;
- (2) confinement in jail for a term of not less than 10 nor more than 30 days; or
- (3) both fine and confinement.

Tex. Civ. Prac. & Rem. Code Ann. § 125.066.

71. 7400 Bissonnet, Le Promenade, is considered a home of the La Primera gang. Many of the gang members tattoo themselves with “7400” to indicate their association to 7400 Bissonnet. Many of the crimes committed at 7400 Bissonnet fall under gang activity as defined under the Texas Penal Code.

V. Grounds for Suit

72. Based on Tex. R. Civ. P. 58, Plaintiff hereby adopts by reference the foregoing factual allegations set forth in Section IV of this original petition and incorporates them as the factual basis in support of the legal grounds for this action, as set forth below.

73. The Texas Civil Practice & Remedies Codes authorizes suit to enjoin and abate a common nuisance under Section 125.002 and a public nuisance under Section 125.064.

74. Defendants have knowingly maintained a place to which persons habitually engage in activities such as aggravated robbery and aggravated assault in violation of the law. The Defendant Property, therefore, is a common nuisance as defined by Section 125.0015 (a) of the Texas Civil Practice & Remedies Code.

75. Proof that a place is frequently used for engaging in gang activity by a member of a combination or a criminal street gang is prima facie evidence that the proprietor knowingly permitted the act. Tex. Civ. Prac. & Rem. Code Ann. § 125.069. The habitual use of a place by a combination or criminal street gang for engaging in gang activity is a public nuisance. Tex. Civ. Prac. & Rem. Code Ann. § 125.063.

VI. Request for Temporary Injunctive Relief

76. Defendants have failed, neglected, or refused to abate the common and public nuisance. Defendants are likely to continue to maintain the property as a common and public nuisance unless restrained by an injunctive order of the court.

77. Unless Defendants are enjoined from maintaining the property as a common and public nuisance, irreparable harm will be suffered by the citizens of Houston and Harris County, Texas. Plaintiff has no other adequate remedy at law to prevent the continued maintenance of the property as a common and public nuisance.

78. The consequences of the above-described unlawful activities at the property, as well as the foreseeable resulting criminal activity and gang activity associated with these acts, would proximately cause a person of ordinary sensibilities to be substantially frightened, discomforted, annoyed and inconvenienced in the use of any premises surrounding the property.

79. In accordance with Tex. Civ. Prac. & Rem. Code Ann. § 125.045(a) (Vernon Supp.2011), if, after notice and hearing on a request by a petitioner for a temporary injunction, a court determines that the petitioner is likely to succeed on the merits in a suit brought under Section 125.002 (Suit to Abate Common Nuisance), the court shall require that each Defendant execute a bond. The bond must be payable to the STATE

OF TEXAS at Harris County; be in the amount set by the court, but no less than \$5,000 nor more than \$10,000; have sufficient sureties approved by the court; and be conditioned that the defendant will not knowingly allow a common nuisance to exist at that place.

80. Based on Section 125.002(e) of the Texas Civil Practice & Remedies Code, if the judgment is in favor of the petitioner, the court shall grant an injunction ordering Defendants to abate the nuisance and be enjoined from maintaining or participating in, the common nuisance existing on the property. The court may include in its order reasonable requirements to prevent the use or maintenance of the place as a nuisance.

81. Because the petitioner brings this action *in rem*, the judgment shall be a judgment *in rem* against the property as well as against the Defendants, according to Section 125.002(b) and (e) of the Texas Civil Practice & Remedies Code.

82. Pursuant to Section 125.003(a) of the Texas Civil Practice & Remedies Code, should any condition of the bond or any injunctive order by this court be violated, suit upon the bond in the name of the State of Texas should be allowed; and upon a showing of a violation of any condition of the bond or injunctive order, the whole sum of the bond should be ordered forfeited to Harris County, Texas, the originating entity. The place where the nuisance exists should be ordered closed for one year from the date of the order of bond forfeiture.

83. In accordance with Tex.Civ.Prac. & Rem. Code Ann. § 125.002(d) for a common nuisance, and Tex.Civ.Prac. & Rem. Code Ann. § 125.066 for a public nuisance, a person who violates a temporary or permanent injunctive order is subject to the following sentences for civil contempt:

- a. fine of not less than \$1,000 or more than \$10,000;

92. Because the petitioner brings this action *in rem*, the judgment shall be a judgment *in rem* against the property as well as against the Defendants.

93. Under Tex.Civ. Prac.& Rem. Code Ann. § 125.070 (d) a county attorney may sue for money damages on behalf of the state or a governmental entity in a Suit to Abate a Public Nuisance. A county attorney may sue for money damages on behalf of the state or a governmental entity. If the state or a governmental entity prevails, the state or governmental entity may recover:

- (1) actual damages;
- (2) a civil penalty in an amount not to exceed \$20,000 for each violation; and
- (3) court costs and attorney's fees.

94. A county attorney who brings suit on a public nuisance on behalf of a governmental entity shall deposit money received for damages or as a civil penalty in an account to be held in trust for the benefit of a community or neighborhood harmed by the violation of a temporary or permanent injunctive order. Money in the account may be used only for the benefit of the community or neighborhood harmed by the violation of the injunctive order. Interest earned on money in the account shall be credited to the account. The county attorney shall account for money in the account so that money held for the benefit of a community or neighborhood, and interest earned on that money, are not commingled with money in the account held for the benefit of a different community or neighborhood. Tex. Civ. Prac. & Rem. Ann. § 125.070 (g).

VIII. Attorney's Fees

95. It was necessary to secure the services of an assistant Harris County attorney, to litigate this cause of action to enjoin and abate the common nuisance being maintained on the property. Based on Sections 125.003(b) and 125.068 of the Texas Civil Practice & Remedies Code, Plaintiff requests the Defendants be ordered to pay reasonable attorney's fees and costs, including investigative costs, witness fees, court costs and deposition fees.

IX. Bond

96. Pursuant to Section 6.002 of the Texas Civil Practice & Remedies Code, there is no bond required of the Plaintiff in bringing this suit. Additionally, pursuant to Section 125.002 of the Texas Civil Practice & Remedies Code, the Plaintiff is not required to verify the allegations set forth in this petition, nor show any proof of personal injury by the acts complained herein.

X. Prayer

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that:

97. After notice and a hearing on a request for a temporary injunction, the court order Defendants or any other person with an interest in the property to execute a bond payable to the STATE OF TEXAS at Harris County; be in the amount set by the court, but not less than \$5,000, nor more than \$10,000; have sufficient sureties approved by the court; and be conditioned that the Defendants will not knowingly maintain a common nuisance to exist at that place;

98. If the court determines that Defendants are maintaining a common and/or public nuisance at the property, the court render any order allowed by law as necessary to abate the common and/or public nuisance pursuant to Sections 125.046 and 125.065 of the Texas Civil Practice and Remedies Code;

99. Upon a showing by the Plaintiff that any temporary or permanent injunctive order by this court has been violated, the person in violation of said order be subject to the following sentences for civil contempt.

1. a fine of not less than \$1,000 or more than \$10,000;
2. confinement in jail for a term of not less than 10 or more than 30 days;
3. both fine and confinement;

100. Upon showing that any Defendant has failed to cease and desist from creating and maintaining a common nuisance at the property within a time allowed by the court, Harris County, the City of Houston, or any other political subdivision having jurisdiction over Defendant property, may:

1. discontinue the furnishing of utility services by the political subdivision to the place at which the nuisance exists;
2. prohibit the furnishing of utility service to the place by any public utility holding a franchise to use the streets and alleys of the political subdivision;
3. revoke the certificate of occupancy of the place;
4. prohibit the use of city streets, alleys, and other public ways for access to the place during the existence of the nuisance or in furtherance of the nuisance;
5. limit the hours of operation of the place, to the extent that the hours of operation are not otherwise specified by law;
6. order a landlord to terminate a tenant's lease if:

- a. the landlord and the tenant are parties to the suit; and
- b. the tenant has violated a condition of the injunctive order; or

7. order any other legal remedy available under the laws of the state.

101. If, upon final hearing, the court finds in favor of the Plaintiff that a common nuisance exists at Le Promenade Townhomes, the court shall order that the property be closed for one year after the date of judgment;

102. The judgment of this court be a judgment *in rem* against the property, as well as against the Defendants; and

103. Upon final hearing, Plaintiff has judgment against Defendants for

- 1. court costs
- 2. costs of suit;
- 3. cost of investigation;
- 4. witness fees and deposition fees;
- 5. reasonable attorney's fees; and
- 6. such other and further relief to which Plaintiff may be justly entitled.

104. If upon final hearing, the court finds in favor of the Plaintiff that a public nuisance exists at Le Promenade condominiums, the court may award the county:

- i. actual damages;
- ii. a civil penalty in an amount not to exceed \$20,000 for each violation; and

iii. court costs and attorney's fees.

105. If upon final hearing, the court finds in favor of the Plaintiff that a public nuisance exists at Le Promenade condominiums, the court shall order the county attorney who brings suit to deposit money received for damages or as a civil penalty in an account to be held in trust for the benefit of a community or neighborhood harmed by the violation of a temporary or permanent injunctive order. Money in the account may be used only for the benefit of the community or neighborhood harmed by the violation of the injunctive order. Interest earned on money in the account shall be credited to the account. The county attorney shall account for money in the account so that money held for the benefit of a community or neighborhood, and interest earned on that money, are not commingled with money in the account held for the benefit of a different community or neighborhood. Tex. Civ. Prac. & Rem. Ann. § 125.070 (g).

Respectfully submitted,

VINCE RYAN
Harris County Attorney 99999939

TERRY O'ROURKE
First Assistant

ROBERT SOARD
Chief of Staff

ROCK OWENS
Manager, Environment and Infrastructure Group

L. CAHILL
Senior Assistant County Attorney
SBN 00785742
1019 Congress, 15th floor
Houston, Texas 77002
713-755-5101
713-437-4211 (facsimile)
ATTORNEYS FOR THE PLAINTIFF